

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

v.

DAMONE KEITH ADAMS,

Defendant.

MAGISTRATE JUDGE DAVID GRAND

No. 20-30270

ARRAIGNMENT HEARING

Friday, July 31, 2020

- - -

APPEARANCES:

For the Government:

EATON BROWN, ESQ.
Assistant U.S. Attorney

For the Defendant:

DAVID THOLEN, ESQ.

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N O N E

Detroit, Michigan

Friday, July 31, 2020

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THE CLERK: Court calls Case Number 20-30270,
United States of America versus Damone Adams.

MS. BROWN: Good afternoon, your Honor.
Eaton --

THE DEFENDANT: It is Damone by the way.

THE CLERK: Sorry.

THE DEFENDANT: No problem.

THE COURT: Go ahead.

MS. BROWN: Eaton Brown for the United
States, your Honor.

THE COURT: Thank you. Good afternoon. And
sir, before we go any further, I need to advise you of
certain rights that you have.

You have the right to remain silent, which means
you don't need to say anything to me, or answer any
questions that anyone asks of you. Anything that you say
can be used against you, you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Can other people see the
defendant? I'm not able to see him. I hear him just
fine.

1 **MR. THOLEN:** I can see him, Judge. I don't
2 know if he needs to leave the break out room. Is that
3 possible?

4 **THE CLERK:** He's out of the break out room.
5 I'm looking at him.

6 **THE COURT:** I don't see him. I see -- the
7 only people that I see is Mr. Flanagan, Ms. Brown and Mr.
8 Tholen.

9 **MR. THOLEN:** We can all see Mr. Adams, Judge.

10 **THE COURT:** All right. Any problem if we
11 begin, and if anything comes up, you'll just wave and let
12 me know.

13 **THE CLERK:** Yes.

14 **MR. THOLEN:** Yes.

15 **THE COURT:** Sir, as I was saying, you have
16 the right to remain silent. You don't need to say
17 anything or answer any questions, and anything that you
18 say can be used against you, you understand that?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** All right. You also have the
21 right to the assistance of an attorney at all critical
22 stages in your case, including any time authorities
23 question you, and any time you are in court, you
24 understand that?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Thank you. Are you
2 asking the Court appoint an attorney to assist you in this
3 matter?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** All right. I'll appoint the
6 Federal Community Defender Office.

7 **MR. THOLEN:** Thank you, your Honor. For the
8 record, David Tholen of that office.

9 I did have the opportunity in the breakout room to
10 speak with Mr. Adams. We reviewed the nature of his case.
11 He also has been provided a copy of the indictment from
12 North Dakota. I did explain to him the general nature of
13 removal proceedings, and the process that he's entitled to
14 in this district, and he indicated that he does understand
15 that, Judge.

16 **THE COURT:** All right. Thank you. Will he
17 be waiving any of his Rule 5 rights in terms of an
18 identity hearing or other rights that he has under those
19 rules?

20 **MR. THOLEN:** Well, at this point, Judge, we
21 have not made a final determination about that. I think
22 the only -- because it is an indictment, the process he
23 would be entitled to would be the identity hearing alone.

24 We do wish to pursue bond in this matter, and so I
25 goes we would like to take that up first.

1 **THE COURT:** All right. Well, before we go
2 any further, let me just put a few things on the record.

3 First sir, we are appearing by Zoom because our
4 courthouse is closed to in-person proceedings, but I have
5 been able to hear you during this whole time and ask you
6 questions, and you have answered them, and obviously you
7 have been able to hear as well. Do you consent to
8 proceeding over Zoom?

9 **THE DEFENDANT:** Yes, sir. No problem. Not
10 at all.

11 **THE COURT:** Okay. Great. If there is any
12 time you don't hear what's being said, speak up, and we'll
13 make sure we call on you.

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** The next reason that you're here
16 is that an indictment has been issued out of the District
17 of North Dakota against somebody with your exact name, and
18 the allegation is that that indictment is against you, and
19 it charges various narcotic trafficking crimes, and gun
20 crimes. And so that's why you're here, because charges
21 those charges are being made against that person, and that
22 claim is that it is you. Do you understand all of that?

23 **THE DEFENDANT:** Sort of. A lot of this don't
24 even have nothing to do with me. I understand what's
25 going on, but I never seen no gun, honestly. I've seen a

1 lot of stuff --

2 **MR. THOLEN:** Your Honor, if I might
3 interject. Mr. Adams and I discussed this, and I
4 explained to him, without getting into the details or the
5 factual allegations, that the main point is that North
6 Dakota believes that he and the other named individuals
7 were involved in various federal crimes. He did indicate
8 to me that he understood that. Obviously, he may not
9 agree with every allegation in the indictment, nor should
10 he.

11 **THE DEFENDANT:** I apologize. I didn't
12 mean --

13 **THE COURT:** You don't have to apologize. I
14 want to make sure you understand what's going on, and what
15 your rights are.

16 So I think you understand that, you know, there
17 are charges being made in the North Dakota Federal
18 District Court against somebody with your name, and
19 they're claiming that's you. I have no idea if it is or
20 isn't, but that's why you're here. So you understand at
21 least that much?

22 **THE DEFENDANT:** Okay. Yes, sir. Yes, sir.
23 I apologize.

24 **THE COURT:** That's okay. And you also have
25 certain rights being accused of being that person.

1 Number one, you have the right to what's called an
2 identity hearing, where government would have to show that
3 you are, in fact, the person that is the subject of that
4 indictment. So that's one right that you have.

5 You also have the right to have a bond hearing
6 before me or a judge of you our court as to whether you
7 ought to be released pending the resolution of your case.

8 Those are the rights that you have at the present
9 time. And Mr. Tholen, it sounds to me like you need
10 additional time with this individual to explore those
11 rights, and whether he might wish to contest identity, et
12 cetera, is that correct?

13 **MR. THOLEN:** Yes. With respect to the
14 identity hearing, I would like more time. With respect to
15 the bond issue, I'm ready to proceed now on that.

16 **THE COURT:** Let me hear from the government.
17 Is the government seeking detention with respect to this
18 individual?

19 **MS. BROWN:** Your Honor, we are seeking that
20 the detention hearing be set for Monday, please.

21 **THE COURT:** All right. And is Monday the
22 first day that you're able to go forward? You are not
23 able to go forward today?

24 **MS. BROWN:** Yes, your Honor. Your Honor,
25 under the statute we're entitled to that amount of time as

1 well.

2 **MR. THOLEN:** I understand the government's
3 request, but could I place some comments on the record
4 before the Court makes a final decision on that request?

5 **THE COURT:** Go ahead.

6 **MR. THOLEN:** Obviously, this was a, quote,
7 late arrest, and I have had the opportunity to speak with
8 Mr. Adams after 1:00. However, it is my understanding
9 that he was arrested at a specific address that's known to
10 be his address in Detroit, Michigan around 10:30 or 11
11 today. He lives with the mother of his child, and they
12 have together a seven month old son.

13 What's significant is that the mother of his child
14 is also on this indictment, and the mother of his child
15 has appeared -- apparently she's been contacted first.
16 She appeared, and has been granted bond on this case from
17 North Dakota through a Zoom proceeding.

18 Mr. Adams' had attorney Danny Blank from Detroit
19 contact North Dakota and the U.S. Attorneys Office to try
20 to make arrangements for a self-surrender, or to find out
21 if he they were looking to have him appear in North Dakota
22 either personally or through a Zoom proceeding, and they
23 never got back with any clear date, or any decision that
24 something needed to be done.

25 Mr. Adams, as I understand, was fully cooperative

1 when he was arrested at his residence today. He
2 identified himself by his true name. He did not resist or
3 struggle with the officers that were placing him under
4 arrest and, you know, on top of everything else, his
5 birthday is this Sunday.

6 I understand fully that the government has the
7 statutory right to ask for three days. Monday is not even
8 within the full three days, but I think there are some
9 circumstances in this case that might warrant at least
10 starting this hearing, or perhaps the government might
11 reflect and change its position.

12 It is my understanding that the only prior
13 criminal conviction was for a 2012 domestic violence case,
14 for which Mr. Adams got probation and it was discharge
15 from probation.

16 And so, a lot of these things can be verified
17 pretty easily, and I understand the allegations in the
18 North Dakota indictment are serious, but I think it is
19 significant that a co-defendant has been placed at a
20 residence with Mr. Adams already, and he's not trying to
21 hide or trying to flee, and I just want to make that pitch
22 on his behalf, Judge.

23 **THE COURT:** All right. Let me ask, has
24 Pretrial Services interviewed the defendant at this point?

25 **THE DEFENDANT:** Yes, sir.

1 **PRETRIAL SERVICES:** Good afternoon, your
2 Honor. The defendant was interviewed, but Pretrial
3 Services wouldn't advise the government would be seeking
4 detention, and we'll have a written report for the
5 detention hearing.

6 **MS. DELI:** Your Honor, Susan Deli from
7 Pretrial Services. I had the opportunity to speak with
8 Mr. Adams. I also interviewed and spoke with his mother.
9 The information that I received from Mr. Adams and his
10 mother, and also conducting a criminal history check,
11 leads me to believe that there are conditions that
12 Mr. Adams could be released on that would satisfy the
13 risk -- the concerns of risk. However, I did not take
14 factor the charges against him. So to be frank, we would
15 recommend release today based upon the information that we
16 received from our initial investigation.

17 **MS. BROWN:** Your Honor, if I may?

18 **THE COURT:** Yes.

19 **MS. BROWN:** The situation is we're not asking
20 for Monday because we can. We are asking for it because
21 one, it is an out of district case. So we need time to
22 compile the information, not all of which we've received
23 from AUSA.

24 Secondly, the fact that he was found with the
25 mother of his child in a house -- I mean, I can't really

1 speak as to whether or not she violating her bond
2 conditions by doing that, but perhaps nobody knows that
3 they are together.

4 In any event, when they went to find him, he said
5 to the arresting agent that he was aware that he was
6 wanted, and he was asked to surrender, and he declined to
7 do so because he knew how much jail time he was facing.

8 **THE DEFENDANT:** Excuse me, ma'am. That's --

9 **MS. BROWN:** -- I'm going upon the
10 recommendation of the AUSA, but I think when I spoke with
11 the officers who arrested the defendant, I think that
12 information is certainly pertinent for the Court to
13 consider when weighing whether or not to release him.

14 **MR. THOLEN:** Judge, obviously -- I'm sorry.

15 **THE COURT:** Go ahead.

16 **MR. THOLEN:** May I respond to that?

17 **THE COURT:** Yes.

18 **MR. THOLEN:** Obviously, I haven't seen that
19 in any document because no reports of any arrests have
20 been provided, but I will take Ms. Brown at her word, but
21 I think that information or statement -- or that alleged
22 statement can certainly be taken into consideration with
23 the fact that Mr. Adams took this matter seriously enough
24 to have a very respected long time practitioner in
25 Detroit, Daniel Blank, who has represented Mr. Adams in

1 the past, reach out as a professional to the U.S.
2 Attorneys Office in North Dakota to arrange, or to find
3 out how they wanted to handle this, and that office did
4 not respond to Mr. Blank.

5 So this is not a situation where Mr. Adams blew
6 this situation off, or was trying to hide out from the
7 situation. He did the most responsible thing, which is
8 getting an attorney to make some calls on his behalf, and
9 to try to follow through with this.

10 So, you know, when I think the relevance for the
11 fact that a co-defendant, the mother of his child, is on
12 bond to that very address, obviously that's all known to
13 the North Dakota Prosecutor's Office and the North Dakota
14 court, and I suspect if they did any kind of pretrial
15 investigation, she revealed that she has a seven month old
16 son with Mr. Adams, the defendant before your Honor now,
17 which also means they know that Mr. Adams is residing with
18 her at that residence.

19 So, you know, I guess what I'm asking the Court,
20 and it's a little bit unusual, and I understand that the
21 U.S. Attorney's Office in Detroit is acting in concert
22 with the information they are getting from U.S. Attorney's
23 Office in North Dakota, and that's what they
24 professionally do, you know, I would ask if this Court
25 would consider that we started this hearing, and certainly

1 if the government -- anything the government wants to add,
2 we can continue this hearing to Monday, and I would ask
3 this Court consider releasing Mr. Adams on any conditions,
4 GPS electronic tether, anything the Court thinks is
5 necessary. We are talking about approximately 48 hours,
6 and yet, it seems to me inappropriate -- we've heard from
7 Ms. Deli from Pretrial Services that he does not have a
8 significant prior record, or anything that alarmed
9 Pretrial Services that he should be detained, and it makes
10 me think that it would be highly unfortunate to detain
11 Mr. Adams in this set of circumstances over the weekend
12 just to possibly have him released on Monday.

13 Fortunately, Pretrial did do an interview. It's
14 been able to review LIEN, the criminal records. I think
15 there's a lot of information here, and certainly the
16 government is well within its right to ask for additional
17 time, but I think there is no reason we can't start
18 hearing now.

19 **THE COURT:** All right. Why don't we -- first
20 of all, I want to put on the record I just read through --
21 each district does their indictment a little different.
22 So they look a little different.

23 My understanding, Ms. Brown, looking through this
24 indictment, this defendant is not facing a gun charge. Am
25 right about that?

1 **MS. BROWN:** It appears not, correct.

2 **THE COURT:** Okay. So number one, I want to
3 clarify that because initially when I had advised him of
4 the general nature of the indictment, I did not realize
5 that he was not part of the gun charge, and in fact, he
6 said that, you know, he didn't know anything about a gun.
7 So I just want to point that out.

8 You know, it is only 2:00 right now. I think we
9 don't have much more on our docket today. Based on what
10 I'm hearing, and especially based on the COVID situation,
11 it seems very likely that based on what I've heard, that
12 the defendant is candidate for bond.

13 I base that on his lack of significant criminal
14 history; the fact that the charge against him does not
15 involve a firearm, which typically is what causes, you
16 know, the most amount of concern; the fact that his
17 co-defendant wife is already released on bond, and they
18 have baby.

19 So I'm very much inclined to at least release him
20 on bond, even if it means that we continue the detention
21 hearing until Monday. Put him on a GPS tether, and he'll
22 be back Monday for that.

23 I also base this on many cases that we have like
24 this that originate out of state, where they may have a
25 different way of doing things that we do in terms of what

1 their -- you know, I don't know how they view risk of
2 flight, risk of danger and that, although I do note they
3 release the other defendant on bond.

4 Anyway, I guess what I propose is that we
5 reconvene at 4:30. I think that would give the government
6 plenty of time really find out if there's anything that,
7 you know, significantly differs from what we've heard that
8 would suggest the defendant is such a flight risk or such
9 a danger, that it cannot be addressed through a GPS
10 tether, home incarceration, whatever we need to do,
11 whether it's temporarily or for his regular bond
12 conditions. And that will also give Pretrial Services to
13 do some further investigation and thought, and we'll
14 reconvene at 4:30, and I'll hear from both sides, and make
15 a call at that time as to how we will proceed. How does
16 that sound?

17 **MS. BROWN:** Thank you, your Honor.

18 **MR. THOLEN:** Thank you, Judge.

19 **THE CLERK:** Can we check with the marshals
20 regarding that time?

21 **THE MARSHAL:** I have the transport here
22 waiting to take these guys back. So is it possible to
23 hold the hearing from the Midland County Jail?

24 **THE DEFENDANT:** Sir, I'm downtown. They came
25 and searched my house. I didn't argue. That's my

1 mother's home.

2 **THE COURT:** Wait a second, sir. Is there --
3 when are they going to be leaving? Is that Ed?

4 **THE MARSHAL:** Yes, sir. They are waiting
5 now. They are on the curb waiting.

6 **THE COURT:** Well, I don't know. I mean, I
7 really don't want -- Midland is two hours away due north.
8 I mean, he's probably 10 minutes from his house.

9 Ms. Brown, do you want to make a quicker phone
10 call, and see if there's anything significant based on
11 what I said about how I'm leaning?

12 **MS. BROWN:** Your Honor, I can ask for the,
13 you know, paperwork. Some of it has just come in since
14 we've been in court, and I can look it over. I mean --

15 **THE COURT:** Let's take a 15 minute recess on
16 this matter. I'm really inclined, based on what I've
17 heard, to release him on a bond, and I wouldn't want him
18 to sit in jail over a weekend, and I don't want him to go
19 two hours in the wrong direction for nothing. So --

20 **MS. BROWN:** Your Honor, may I say one thing
21 that may influence your decision?

22 They -- the AUSA feels so strongly, he has asked
23 me to stay the Court's decision so they can appeal it to a
24 judge in North Dakota if you are incline to release him.
25 I'm just letting you know they let me know that.

1 **THE COURT:** Based on what?

2 **MS. BROWN:** Based on the fact that they don't
3 agree with your decision.

4 **THE COURT:** Okay. So this is the problem,
5 though, is that the government in certain cases, it seems
6 they are not paying careful enough attention to the
7 factors and the evidence, and the fact they can ask for a
8 stay, doesn't mean it should just happen, and the
9 government should have to provide detailed information and
10 evidence about why the Court's decision is incorrect, and
11 why there is clear and convincing evidence that there is
12 no combination of conditions that could reasonably assure
13 the community's safety or his risk of flight, and least so
14 far, I have not heard anything that would suggest that.
15 At this point all I've heard is that he is charged with a
16 drug trafficking crime.

17 So you know --

18 **MS. BROWN:** Your Honor, I'm just telling you
19 that's what they intend to do.

20 **THE COURT:** But you're just not the messenger
21 though in this. You're the attorney in this court, and
22 you know, what happens is, I do what I'm suppose to do and
23 follow the law, and then a person ends up going to -- you
24 know, take however long, and then the last time we did
25 this, the judge in other district just released him right

1 away, and it was just a complete waste of time.

2 So maybe talk about it with the other attorney
3 from the other district and say, you know, the Judge
4 really wants to hear some evidence that is clear and
5 convincing standard being met. That might be a good use
6 of the time that we're going take this short recess.

7 **MS. BROWN:** Happy to do that, your Honor.

8 **THE COURT:** All right. So let's take a 15
9 minute recess on this case.

10 Are you handling any other cases that we have?

11 **MS. BROWN:** I am, your Honor. I'm handling a
12 matter with Ms. Gardey.

13 **THE COURT:** Are we ready to do that one?

14 **THE CLERK:** We are, your Honor.

15 **THE COURT:** Is this a detention hearing also?

16 **MS. BROWN:** It is.

17 **THE COURT:** All right. How much time do you
18 need to talk to the AUSA in North Dakota and explain all
19 the circumstances that we just discussed and then to get
20 back to me?

21 **MS. BROWN:** I have not tried to call him by
22 phone. So I would have to, you know, call him now, and
23 then, you know, provide he answers. I think he was
24 anticipating the hearing would be Monday. So if he's
25 available, as soon as get off the -- you know, stop the

1 hearing, I'll be happy to talk to him.

2 **THE CLERK:** Judge, if I may. Mr. Tholen
3 still needs to meet Patrick Johnson. If you wanted to
4 recess for a moment, I can ask that Mr. Tigner leave the
5 room, and Patrick Johnson come in, and Mr. Tholen and him
6 can meet. Ms. Brown can make the calls, and then when we
7 do reconvene, we'll be ready to go on everything.

8 **MR. THOLEN:** Judge, I'm fine with that. I
9 appreciate Aaron's suggestion.

10 **THE COURT:** All right. These fine. We'll
11 take -- do you think 10 minutes is enough time with the
12 other individuals, Mr. Tholen?

13 **MR. THOLEN:** I do, Judge.

14 **THE COURT:** All right. We'll take a 10
15 minute recess.

16
17 (Recess taken.)

18
19 (Proceedings resumed.)

20
21 **THE CLERK:** Your Honor, recalling Case Number
22 20-30270, United States of America versus Damone Keith
23 Adams.

24 **THE COURT:** The government indicated that
25 they were going to be seeking detention. I heard from

1 Pretrial Services that they were prepared to release Mr.
2 Adams on bond, and then Ms. Brown was going to follow up
3 with her colleague in North Dakota to get additional
4 details. Go ahead.

5 **MS. BROWN:** Thank you, your Honor.

6 So just by way of factual background, a couple of
7 things that I would indicate to the Court. This is a
8 presumption case. The mandatory minimum on Count 2 is a
9 20 year mandatory minimum, and given the nature and the
10 weight of the controlled substances that the defendant was
11 distributing in Count 1, that also again makes it a
12 presumption case.

13 By way of facts, the defendant is a Detroit based
14 distributor of drugs who uses interstate shipping and
15 other means to transport oxycodone, 30 milligrams pills,
16 Fentanyl and heroin from Detroit to North Dakota, which he
17 distributed primarily on the Fort Berthold Indian
18 Reservation in Bismarck, North Dakota.

19 He is able to direct others to distribute the
20 opioid drug and communicate with them primarily via Face
21 Time, meaning he can conduct this business from the
22 comfort of his own home.

23 He transports or uses various means of transport
24 car, train, airline and commercial carrier.

25 If the Court would like, I can proceed to argument

1 now based on my conversation with the AUSA of North
2 Dakota. Would you like proceed to argument?

3 **THE COURT:** I want to be clear of what's
4 taking place here. Is this the detention hearing at this
5 point, or is the -- or are you just explaining reasons you
6 need Monday to hold the detention hearing because that's
7 what the government asked for initially?

8 **MS. BROWN:** Well -- well, my understanding is
9 that the Court wanted to proceed, but -- with the
10 detention hearing. That's what I was doing because the
11 Court was going to deny our request for a continuance of
12 one day to Monday, but if misunderstood --

13 **THE COURT:** I wasn't necessarily going -- I
14 did not say that I was denying your request. I wanted to
15 see what the factual basis was A, for the request and B,
16 for the request to have the additional time, and then C,
17 to get a better understanding of what are the facts here
18 such that we would have a better idea of the overall
19 situation.

20 So, you know, if the government, you know, wants
21 until Monday to hold the hearing, and based on what you
22 have said about additional factual details, you know, I
23 guess I don't know that is, you know, inappropriate given
24 it is 2:30 now. And you know, on the other hand, if the
25 government after looking at it was of a different mind set

1 that it might not be seeking detention, you know, that
2 would be a different situation.

3 So the government is still seeking detention?

4 **MS. BROWN:** That's correct, your Honor.

5 **THE COURT:** All right. And does the
6 government want until Monday to fully prepare for the
7 detention hearing in this matter?

8 **MS. BROWN:** That would be our preference, but
9 if the Court, as indicated previously, was inclined to
10 release him -- I mean, our preference would be to wait
11 until Monday so that we can, you know, be fully prepared.
12 Like I say, all of the salted paperwork came through while
13 I was in court. So I had chance briefly look it over.

14 But I will tell you a couple facts that have come
15 came to attention that might alleviate your concerns about
16 holding him, and that is when I spoke with the AUSA just
17 know, he informed me both -- that both the lawyer,
18 Mr. Blank, called out and spoke to the U.S. Attorney for
19 North Dakota directly, who informed Mr. Blank that his
20 client needed to turn himself in. And then the next day,
21 the defendant called the AUSA directly, and they had a
22 conversation, and the AUSA told the defendant he needed to
23 turn himself in.

24 So there was no question in Mr. Adams' mind --
25 this was July 1st and July 2nd -- that for the last almost

1 a month he has been wanted.

2 **THE DEFENDANT:** Ma'am, that is a lie. Ma'am,
3 that is a lie. People told me they would return my phone
4 call and never did.

5 **MR. THOLEN:** Mr. Adams, you shouldn't say
6 anything.

7 **THE COURT:** Wait a second, sir.

8 Okay. I'm going -- I am going to, you know, grant
9 the government's request to have until Monday to hold the
10 detention hearing. I really don't want to do that. My
11 strong inference is based on what I have heard, and what
12 my gut reaction is to it all is that bond very much an
13 appropriate in this case, and I really hate to have
14 somebody in custody even over the weekend when I get that
15 feeling.

16 On the other hand, I think that there are -- have
17 been some questions raised by the government from an
18 evidentiary perspective that the defendant obviously very
19 strongly disagrees with. You know, the government is
20 making certain assertions about phone calls and things
21 like that. And I guess I just also think that it might be
22 in the defendant's best interest to allow his attorney
23 here to work with him between now and Monday to be able to
24 put all of their ducks in a row, their best foot forward
25 to hold that hearing, and it might also lead -- I would

1 hope it would lead to a conversation between the
2 government counsel and the defense counsel in conjunction
3 with the Pretrial Services recommendation, and hopefully
4 lead to an agreement on bond conditions once everyone can
5 maybe get a little more on the same page about what did
6 and did not happen.

7 And it just strikes me that's information that the
8 government is entitled to fully explore. I just want them
9 to fully explore it, and then react in good faith. And
10 I'm not pointing the finger right now when I say good
11 faith at all to Ms. Brown.

12 My concern is in these cases that we have in other
13 districts, where it seems like in our district, the person
14 would very clearly be released where the government would
15 not even seek detention, and then because a AUSA is like
16 nameless, faceless AUSA in some other jurisdiction says we
17 want to appeal, or we want him detained, we go through all
18 of this, and frankly it's just not fair. It's not fair to
19 the defendant if that's how it happened.

20 Now if it is supported by evidence, and there's,
21 you know, a reasonable argument that clear and convincing
22 evidence shows him to be a danger, or a preponderance of
23 the evidence shows him to be a flight risk, and it could
24 be reasonably be argued either way, you know, then
25 absolutely that is fine.

1 But I've just seen a lot of cases where it seems
2 like in our court that standard very clearly is not met,
3 and yet, we have to transport the defendant all over the
4 United States just to get to the other location, and more
5 often than not be released there anyway once they are in
6 front of that district judge there.

7 So I really just want to prevent that from
8 happening, and if taking this weekend to allow further
9 development, further discussion that could potentially
10 result in that kind of an outcome, that would be a much
11 better outcome for the defendant than for me to release
12 him right now, have the government appeal, and then have
13 him shipped to North Dakota, and probably take three plus
14 weeks to get him there.

15 So I will grant the government's motion for a
16 continuance of the detention hearing until -- well, to
17 hold the detention hearing on Monday. And just so it is
18 clear, I won't be the one holding the detention hearing.
19 I'm just granting the government's motion to hold the
20 detention hearing on Monday, and entering an order of
21 temporary detention until that time, and again, hopefully
22 you all can work out a resolution that makes sense for
23 everybody. Thank you.

24 **MR. THOLEN:** Judge?

25 **THE COURT:** Yes.

1 **MR. THOLEN:** I'm sorry. It's David Tholen on
2 behalf of the defendant.

3 Your Honor, I understand everything that the Court
4 just said. I would ask -- it appears that there have been
5 bond arguments made. I know that I've made bond
6 arguments, and I believe I've heard Ms. Brown make
7 detention arguments, as well as make a request to have the
8 detention hearing set over to Monday.

9 I would ask if this Court would consider that the
10 hearing has been started. Certainly, I have no objection
11 to the hearing being continued until Monday, but if the
12 Court would make that type of finding, I think that does
13 allow the Court to consider potential release between now
14 and Monday. And for all the reasons I argued earlier, I
15 ask the Court to consider releasing this defendant on bond
16 with the most restrictive conditions possible, and that we
17 reconvene Monday to make a final determination about bond
18 or detention in this matter.

19 **MS. BROWN:** May I respond?

20 **THE COURT:** You don't need to. You know, I
21 appreciate that request. I appreciate you advocating for
22 your client, and I appreciate how unfortunate it is that
23 under my approach, it means he's going to spend at a
24 minimum, a weekend in jail.

25 On the other hand, I kind of view that request in

1 light of the whole -- well, for me to do would really be
2 to place kind of form over substance in this situation,
3 and to kind of dictate a result that I want, and
4 circumventing the process, and I don't do that, even if it
5 is something that I really want, and something that I
6 really think, you know, what should happen. If that's not
7 what's, you know, right under the rules and procedures,
8 then I'm not going to do it.

9 And I just think what I wanted to see was, okay,
10 what's really going on here? What's the basis for the
11 request for the day? What is the string of the
12 reasonableness of the request, and I think Ms. Brown did
13 what I asked. She went and talked to her colleagues. She
14 got some additional information, and so that really just
15 satisfied me about her request to hold the detention
16 hearing on Monday.

17 So that's all I'm doing, entering an order of
18 temporary detention. Holding the defendant until Monday.
19 Granting the government's motion to have the one business
20 day to prepare, and I think it will allow the defendant to
21 fully prepare as well, and put his best foot forward with
22 the hearing.

23 **MR. THOLEN:** I understand, you Honor.

24 **THE COURT:** Thank you.

25 **THE CLERK:** Mr. Tholen, your client has his

1 hand up.

2 **THE DEFENDANT:** I had my hand up for awhile.
3 I was just letting you guys know when I called down to
4 that office, the lady -- Danny told me specifically to
5 turn myself in. If I turn myself in, North Dakota will
6 move to detain me due to COVID, that I would probably be
7 safer there. That was his exact words. If I'm not
8 mistaken, Danny told me he emailed the people. That's
9 what Danny told me, and I'm probably sure I could get
10 those emails.

11 When I called down there, the lady told me that
12 the supervisor would get ahold of me, and I never received
13 a phone call ever.

14 My problem isn't with the charges or -- I'm sorry,
15 sir. I apologize. I'm just trying to speak with you.

16 **THE COURT:** You don't have to apologize. I
17 want you to be able to fully present those arguments, and
18 it's -- right now it's 3:00 -- almost 3:00. So I just
19 think also it is -- as much as I don't want to see you sit
20 in jail over the weekend, which is what is going to
21 happen, I would rather you sit in jail over the weekend,
22 which will allow you to put your best foot forward, have
23 all of this evidence that you are referring to, give your
24 attorney an opportunity to speak with you about all of it,
25 track it all down, and then you will present that on

1 Monday. And I don't take it lightly that it means you'll
2 be in jail for two days, but it is better than --

3 **THE DEFENDANT:** It's not about the two days,
4 your Honor. It's really, like I was telling the pretrial
5 agent and my lawyer, I just had my first child. My
6 birthday is Sunday. Like, this stuff is just getting
7 started, like a few of these people on this list is being
8 picked up, already. I don't want to go through the
9 proceeds with my son. You get what I'm saying?

10 Like I say, this is probably the only birthday
11 he's going to spend with me. Me, him and my dad, we all
12 got the same names. It's kind of an important thing to
13 me. That's what I was telling the lawyer and Pretrial
14 Services.

15 I'm not a flight risk. I'm not going anywhere. I
16 stay in the same house that I've always lived in. I've
17 been to college. I don't do anything violent. I never
18 seen any guns or any of that weird stuff. I know what's
19 going on in the city right now. I don't have anything to
20 do with none of that.

21 I keep to myself. I stay with my family and my
22 child. My child's car seat is in the back car of my car
23 seat. It's there all day everyday, because literally
24 because of this -- you get what I'm saying? I just
25 preparing for the worst or whatever, and this probably

1 will be the only birthday I actually get to spend with the
2 little guy, you get what I'm saying, besides seeing behind
3 the glass or something.

4 **THE COURT:** I don't know. I don't know, sir.
5 You are presumed innocent. Right now I treat you like
6 that. There are certain results that apply.

7 **THE DEFENDANT:** I understand.

8 **THE COURT:** The government has rights just
9 like you have rights, and I'm just trying to respect
10 everybody's rights and reach -- take an approach that I
11 think allows you your best opportunity to advocate for
12 yourself, to meet with the attorney, have your attorney
13 advocate for you.

14 So I appreciate everything that you said. My
15 ruling will stay the same. It will be an order of
16 temporary detention. You'll be back Monday at 1:00.

17 And again just in closing, I really hope counsel
18 can figure out a way to come to a consensus about a
19 resolution. It sure seems like that this is one where you
20 should be able to do that.

21 Thank you.

22
23 (Proceedings concluded.)
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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

August 17, 2020
Date

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